



March 7, 2001

Ms. Carolyn Wright
Assistant General Counsel
Texas Department of Health
1100 West 49th Street
Austin, Texas 78756-3199

OR2001-0902

Dear Ms. Wright:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 144805.

The Texas Department of Health (the "department") received a written request for records pertaining to a complaint filed against the requestor, a licensed social worker and a registered sex offender treatment provider. You state that the department has released some responsive information to the requestor.¹ You contend, however, that other requested information is excepted from disclosure under section 552.101 of the Government Code in conjunction with section 8C of article 4413(51), V.T.C.S.

We note at the outset that the department did not request a decision from this office within ten business days following the department's receipt of the records request. Section 552.301(a) of the Government Code requires a governmental body to release requested information or to request a decision from the attorney general within ten business days of receiving a request for information the governmental body wishes to withhold unless there has been a previous determination that the requested information is excepted from required public disclosure. When a governmental body fails to comply with the requirements

¹The requestor also seeks "rules, regulations, policies, and procedures related to the professional & ethical conduct of investigators and investigations." Because you do not argue that these requested records are excepted from public disclosure, we assume the department has released this other information to the requestor. If it has not, it must do so at this time. See Gov't Code §§ 552.301, .302.

of section 552.301, the information at issue is presumed public. Gov't Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App.--Austin 1990, no writ); *City of Houston v. Houston Chronicle Publishing Co.*, 673 S.W.2d 316, 323 (Tex. App.--Houston [1st Dist.] 1984, no writ); Open Records Decision No. 319 (1982). The governmental body must show a compelling reason to withhold the information to overcome this presumption. Gov't Code § 552.302; *see also Hancock*, 797 S.W.2d at 381.

A compelling reason for withholding information is demonstrated where information is made confidential by other law, or where third party interests are at issue. Open Records Decision No. 150 (1977). Section 552.101 of the Government Code protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Consequently, we will consider your section 552.101 claim.

Article 4413(51) establishes the Interagency Council on Sex Offender Treatment, which, among other things, hears and resolves complaints concerning sex offender treatment. V.T.C.S. art. 4413(51), § 8B. Section 8C(h) of article 4413(51) provides as follows:

All information and materials subpoenaed or compiled by the council in connection with a complaint and investigation are confidential and not subject to disclosure under [the Public Information Act], and not subject to disclosure, discovery, subpoena, or other means of legal compulsion for their release to anyone other than the council or its employees or agents involved in the complaint and investigation, except that this information may be disclosed to:

- (1) persons involved with the council in a complaint and investigation;
- (2) professional sex offender treatment provider licensing or disciplinary boards in other jurisdictions;
- (3) peer assistance programs approved by the board under Chapter 467, Health and Safety Code;
- (4) law enforcement agencies; and
- (5) persons engaged in bona fide research, if all individual-identifying information has been deleted.

We have reviewed the information at issue and conclude that the information is made confidential under section 8C(h) of article 4413(51). We further conclude that none of the exceptions to the confidentiality listed under section 8C(h) are applicable here.

Consequently, the department must withhold the information at issue in its entirety pursuant to section 552.101 of the Government Code.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

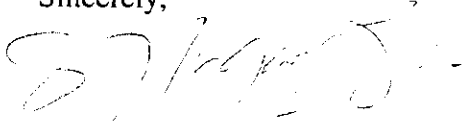
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for

contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in dark ink, appearing to read "Michael J. Burns", is written over a faint, larger signature.

Michael J. Burns
Assistant Attorney General
Open Records Division

MJB/RWP/seg

Ref: ID# 144805

Encl. Submitted documents .

cc: Mr. David O. Navarre
Navarre & Associates
313 East Rundberg Lane, Suite 105
Austin, Texas 78753
(w/o enclosures)